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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

16 In re
17 EAGAN AVENATTI, LLP,
18 Debtor.

Case No. 8:18-CV-01644-VAP-KES

**JUDGMENT CREDITOR JASON FRANK
LAW, PLC'S SUPPLEMENTAL BRIEF ON
JUDGMENT DEBTOR'S MOTION FOR A
PROTECTIVE ORDER; SUPPLEMENTAL
DECLARATION OF JASON M. FRANK IN
SUPPORT THEREOF**

Date: October 10, 2018
Time: 10:00 a.m.
Courtroom: 6D

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1 Judgment Creditor Jason Frank Law, PLC (“JFL”) hereby files this Supplemental Brief
 2 regarding the Motion for Protective Order (“MPO”) filed by Judgment Debtor Eagan Avenatti, LLP
 3 (“EA”) relating to the Order to Appear for Judgment Debtor Examination (“ORAP”) and related
 4 Subpoena to produce documents (the “ORAP Subpoena”).

5 **A. The Court Has Jurisdiction to Hear the MPO.**

6 This Court properly has jurisdiction to hear any matter regarding the enforcement of JFL’s
 7 Judgment against EA (the “Judgment”), including the MPO.

8 *First*, the Judgment was entered against EA due to EA’s breach of the settlement agreement
 9 between JFL and EA (the “Settlement”). [Supplemental Declaration of Jason M. Frank (“Frank
 10 Supp.”), Exh. 5.] Under Section 3.6 of the Settlement, EA agreed that in the event of a breach, EA
 11 would not oppose the entering of a Final Judgment against EA in the amount of \$10 Million and
 12 “expressly consent[ed] to the *exclusive jurisdiction* of the Bankruptcy Court to enter this Final
 13 Judgment against EA.” [*Id.*, § 3.6 (emphasis added).] The Structured Settlement and Dismissal
 14 Order likewise provided that the Bankruptcy Court would retain post-dismissal jurisdiction. [Frank
 15 Decl.,¹ Exh. B., ¶ 10.] Consequently, when EA breached the Settlement, it did not -- and could not
 16 -- oppose the Bankruptcy Court’s jurisdiction to enter the Judgment. [Frank Supp., ¶ 17.] No
 17 appeal was taken from the Judgment (entered on May 22, 2018), and the time for appeal expired.
 18 [*Id.*] As a result, the Judgment is a final *federal* judgment. Fed. R. Bank. Proc. Rule 8002.

19 *Second*, “a judgment creditor may bring an action to enforce a [federal] judgment in any
 20 district court.” Peterson v. Islamic Republic of Iran, 627 F.3d 1117, 1123 (9th Cir. 2010) (citing
 21 Hilao v. Estate of Marcos, 536 F.3d 980, 983 (9th Cir. 2008)). Pursuant to 28 U.S.C. § 1963, JFL
 22 registered the Judgment with the District Court on September 4, 2018 and the case was assigned to
 23 this Court on September 12, 2018. [Frank Decl., Exh. F.] Once a federal judgment is registered,
 24 the judgment “shall have the same effect as a judgment of the district court of the district where
 25 registered and may be enforced in like manner.” 28 U.S.C. § 1963; Peterson, 627 F.3d at 1123; In
 26 re Snavely, 314 B.R. 808, 815 (9th Cir. BAP 2004) (“By voluntarily registering the bankruptcy

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 28 ¹ References to the “Frank Decl.” are to the initial Declaration of Jason M. Frank and attached Exhibits filed with JFL Motion to Set Hearing Date on Judgment Debtor’s Motion for Protective Order. [Dkt. 6.]

1 court judgment in District Court, the judgment so registered has the same effect and may be
 2 enforced as a District Court judgment.”) Consequently, the Judgment may be enforced by this
 3 Court in the same manner it could be enforced in the Bankruptcy Court. Id.

4 *Third*, the Bankruptcy Court has notified the parties it intends to abstain from further
 5 proceedings and wishes to have the pending proceedings, including the MPO, transferred to this
 6 Court. [Frank Decl., Exh. E; Frank Supp., ¶ 18.] Consequently, this Court will not be interfering
 7 with the Bankruptcy Court by ruling on the MPO.

8 *Fourth*, the Bankruptcy Court continued the hearing on its Notice of Intent to Abstain to
 9 October 10, 2018, so JFL could file an expedited Motion to Withdraw the Reference (“Withdrawal
 10 Motion”) to transfer all proceedings to this Court and eliminate any challenges to the propriety of
 11 this Court ruling on the MPO. [Frank Supp., ¶ 18.] The Withdrawal Motion was filed on
 12 September 27, 2018 with a requested hearing on or before October 8, 2018. [Id., ¶ 19; Dkt. 12, 13.]

13 In sum, the Judgment has been properly registered before this Court and EA cannot avoid
 14 the enforcement of the Judgment.

15 **B. Status of Meet and Confer Efforts.**

16 On or about July 30, 2018, JFL offered to narrow its request for documents, without
 17 prejudice to its right to later seek all documents requested in the ORAP Subpoena. [Frank Decl.,
 18 Exh. H.] To date, EA has not responded to that offer, nor has it indicated it is willing to produce
 19 any documents responsive to the ORAP Subpoena. [Frank Supp., ¶ 20, Exh. 6.] After the Status
 20 Conference with this Court on September 24, 2018, JFL sent an email to EA and its counsel again
 21 requesting a response to the meet and confer offer. [Id.] EA has not responded nor offered to
 22 produce *any* documents. [Id.]

23 JFL is still willing to limit the ORAP Subpoena in accordance with its offer, with one
 24 important exception. JFL previously offered to allow EA’s counsel – Hamid Ratfatjoo – to
 25 summarize the compensation terms of client fee agreements in lieu of producing the agreements so
 26 long as Mr. Ratfatjoo personally verified their accuracy. [Frank Decl., Exh. H, Nos. 14, 24.] JFL
 27 has recently learned that Mr. Ratfatjoo will no longer be representing EA in this matter. [Frank
 28 Supp., ¶ 20, Exh. 6.] JFL was only willing to offer this summary alternative if it felt it could trust

1 the party preparing the summary. In light of Mr. Ratfatjoo's departure, JFL stands on its initial
 2 request for the client fee agreements.² As established in JFL's Opposition to the MPO, “[t]he Ninth
 3 Circuit has repeatedly held retainer agreements are not protected by the attorney-client privilege or
 4 work product doctrine.” Gusman v. Comcast Corp., 298 F.R.D. 592, 599 (S.D. Cal. 2014) (citing
 5 collection of cases). And, “in an action to enforce the judgment of another federal court, federal
 6 common law regarding privileges apply.” Internet Direct Response, Inc. v. Buckley, No. SACV
 7 09-01335 ABC (MLGx), 2010 WL 1752181, at *5 (C.D. Cal. April 29, 2010) (denying motion for
 8 protective order and holding that California's qualified tax return privilege did not apply in action
 9 to enforce a federal judgment) (citing Heathman v. U.S. Dist. Court for Central Dist. Of California,
 10 503 F.2d 1032, 1034 (1974).) Consequently, EA's objections to producing the retainer agreements
 11 on state law privilege and privacy grounds are not well taken.

12 **C. Brief Factual Background.**

13 The following background is provided for the Court's benefit as context for the requested
 14 document issues in dispute.

15 **1. The Parties.**

16 EA is a contingency law firm based in Newport Beach, California. [Frank Supp., Exh. 7
 17 (Avenatti Decl.), ¶ 1.] The managing partner of EA is Michael Avenatti (“Avenatti”). [Id.]
 18 Avenatti currently owns 100% of EA through his professional corporation, Avenatti & Associates,
 19 APC (“AA”). [Id., Exh. 7, ¶ 3.] Avenatti is the sole owner of AA. [Id.]

20 Until recently, EA had two equity partners, Avenatti and Michael Eagan (“Eagan”). [Frank
 21 Supp., Exh. 7, ¶ 3.] According to EA's bankruptcy schedules, Avenatti owned 75% of EA (through
 22 AA) and Eagan owned 25%. [Id.; Exh. 12 (Doc. 161, p. 10, Question 28).] It is unknown at this
 23 time when Eagan left EA and what, if any, distributions Eagan received.³ [Id.]

24
 25 ² JFL is still willing to agree if a case has not been filed that EA can redact the client's name and use a unique
 pseudonym for reference.

26 ³ Presumably, Eagan recently left EA because Avenatti filed a declaration on July 2, 2018 stating that EA has two
 27 equity partners, Eagan and Avenatti. [Frank Supp., Exh. 7, ¶ 3.] However, a few weeks later, during the first day of
 28 the Judgment Debtor Exam on July 25, 2018, Avenatti testified he could not remember when Eagan left the firm or if
 it occurred after the bankruptcy was dismissed (which occurred in March 2018). [Id., Exh. 16 (Avenatti Tr.) at 58:25
 – 59:15.]

1 JFL is a professional law corporation, owned by Jason M. Frank (“Frank”), an attorney who
 2 previously worked at EA. [Frank Supp., ¶ 4.] From November 2013 through May 2016, Frank
 3 worked at EA pursuant to an Independent Contractor Agreement between JFL and the firm (the
 4 “JFL Contract”). [Id., Exh. 1.]

5 **2. The Underlying Dispute.**

6 The genesis of this dispute began four years ago when EA failed to pay substantial sums
 7 owed to JFL under the parties’ agreement and misrepresented the profits of the firm. [Frank Supp.,
 8 ¶ 5.] Under the JFL Contract, JFL was entitled to 25% of the firm’s annual profits, 20% of the fees
 9 from JFL’s clients, and 10% of the fees from a class action settlement in which EA was awarded
 10 \$23.5 Million (the “Eden Class Action”). [Id., Exh. 1, § 3.]

11 After lengthy efforts to resolve the dispute were unsuccessful, JFL filed a demand for
 12 arbitration against EA in February 2016 before JAMS. [Frank Supp, ¶ 5.] The arbitration was
 13 assigned to a three-judge panel consisting of retired California Appellate Court Justice Steven
 14 Stone, and retired California Superior Court Judges Terry Friedman and Judith Ryan (the “Panel”).
 15 [Id., ¶ 6.] The trial was set for March 13, 2017. [Id.]

16 **3. EA is Sanctioned for Failing to Produce Financial Records.**

17 During discovery in the arbitration, EA violated numerous Panel orders to produce its
 18 financial records, including EA’s tax returns and Schedule K-1s (as required under the JFL
 19 Contract). [Frank Supp., ¶ 7, Exh. 2.] This resulted in substantial evidentiary and issue sanctions
 20 against EA, as detailed in the Panel’s Final Sanction Order. [Id.]

21 On February 10, 2017, approximately one month before trial, the Panel unanimously found
 22 that EA had “acted with malice, fraud and oppression by hiding its revenue numbers” and “tax
 23 returns” from JFL in violation of the JFL Contract and authorized JFL to add a claim for punitive
 24 damages. [Frank Supp, Exh. 2 at 2-4.] On February 22, 2017, the Panel ordered Avenatti, Eagan,
 25 EA’s bookkeeper, Judy Regnier, and EA’s outside accountant to sit for a deposition by March 3,
 26 2017, noting their excuses for avoiding the depositions revealed “the same pattern of delay,
 27 obfuscation and unresponsiveness by EA that has characterized its conduct throughout the
 28 arbitration.” [Id., Exh. 3 at 2.]

1 **4. The Gerald Tobin Involuntary Bankruptcy Petition.**

2 On March 1, 2017, two days before the deposition deadline and twelve days before trial, a
 3 purported creditor of EA named “Gerald Tobin” filed a petition to place EA into involuntary
 4 Chapter 11 bankruptcy. [Frank Supp., ¶ 9.] Tobin alleged he was owed only \$28,700 and filed
 5 his petition to place EA into involuntary bankruptcy in the Middle District of Florida, even though
 6 EA is a law firm based in Newport Beach, California. [Id.] The address on Tobin’s petition was
 7 for a UPS mailbox that was opened with cash on February 28, 2017, one day before the filing of
 8 the petition. [Id.]

9 On March 2, 2017, EA notified the Panel the depositions and arbitration could not go
 10 forward due to the Tobin petition and the resulting automatic bankruptcy stay. [Frank Supp., ¶ 10.]
 11 EA and Avenatti denied having any involvement in Tobin’s petition and claimed the timing of the
 12 petition was just a “coincidence.” [Id.]

13 On March 8, 2017, the bankruptcy court in Florida conditionally granted JFL relief from
 14 the automatic stay so the arbitration could go forward, with the caveat that the stay would remain
 15 in effect if EA voluntarily consented to bankruptcy. [Frank Supp., ¶ 11, Ex. 4.] .In explaining her
 16 ruling, the Florida bankruptcy court noted that Tobin’s “involuntary case has the *stench of*
 17 *impropriety*” and “I don’t have any real confidence that [EA is] going to stay in this bankruptcy or
 18 any other bankruptcy, and that whether [Tobin] has some relationship with the firm that would have
 19 induced a *collusive filing* or if [EA] just got plain lucky that somebody filed on the eve of the
 20 arbitration, I just don’t know, but because of that issue [EA] will have until this Friday to decide
 21 whether they want to stay in bankruptcy or not.” [Frank Supp., Exh. 4 at 22:12-13; 23:9-17
 22 (emphasis added).]

23 **5. EA Consents to Be Placed into Chapter 11 Bankruptcy to Avoid the
 24 Arbitration.**

25 On Friday, March 10, 2017, two days after the Florida Bankruptcy Court ruled the Tobin
 26 petition would not stop the arbitration from going forward, Avenatti consented to place EA into
 27 Chapter 11 bankruptcy. [Frank Supp., ¶ 12.] As a result, the trial did not go forward on Monday,
 28 March 13, 2017. [Id.]

1 **6. Where Did EA's Money Go?**

2 The ORAP Subpoena was issued to determine EA's assets, including whether there were
 3 any fraudulent transfers of assets prior to the bankruptcy or a deliberate undercapitalization of the
 4 firm to avoid paying the amounts owed to JFL. In accordance with applicable law, JFL will be
 5 seeking to recover such assets, including assets improperly transferred to Avenatti, Eagan or their
 6 related entities.

7 As noted above, in 2014, EA -- which was an eight-attorney law firm -- received \$23.5
 8 Million in revenue from the Eden Class Action. [Frank Supp., Exh. 8, ¶ 7.] According to EA's
 9 bankruptcy schedules (signed under penalty of perjury by Avenatti), EA reported approximately
 10 \$6.5 Million of revenue in 2015 and \$7.77 Million of revenue in 2016. [Id., Exh. 9, p. 1 (Question
 11 1).] JFL is aware of additional millions of dollars of revenue collected by the firm during those
 12 years from JFL's clients and cases. And yet, when it filed for bankruptcy in March 2017, EA
 13 reported it only had \$212,000 in cash.⁴ [Id., Exh. 10, p. 2 (Question 3).] Further, when the U.S.
 14 Marshal levied EA's bank accounts in an effort to enforce the JFL Judgment, EA only had
 15 approximately \$3,003 in June 2018 and \$99 in July 2018. [Frank Supp., Exhs. 13, 14.] Clearly,
 16 finding out where all this money went is of utmost importance in determining what assets are
 17 lawfully available to satisfy the Judgment.

18 **7. The Interplay Between EA, AA and Avenatti.**

19 Avenatti has at all relevant times been the managing partner and majority owner of EA.
 20 [Frank Supp., Ex. 7, ¶ 3.] Avenatti owns his interest through his personal corporation AA. [Id.] However, both during and after the bankruptcy, Avenatti has provided testimony indicating he may
 21 have been, and continues to be, diverting EA business and fees to AA. Further, the line between
 22 Avenatti, EA and AA is incredibly blurred

23 *First*, when required on the Statement of Financial Affairs to identify any insider payments
 24 from EA the previous year before the bankruptcy, Avenatti (on behalf of EA) first answered "none."
 25 [Frank Supp., Exh. 9, p. 3 (Question 4).] When forced to provide new schedules, EA identified

26 ⁴ EA also claimed it owned \$200,000 in artwork, furniture and computer equipment, but Avenatti now claims the
 27 "vast majority" of artwork, furniture and equipment is owned by Avenatti personally. [Frank Supp., Exh. 16 at 98:6-
 28 10.]

1 eight separate “loan repayments” to Avenatti totaling \$1.45 million. [Id., Exh. 12, p. 4 (Question
 2 4, pp. 14-15 (SOFA Question 4 Attachment).] When asked about these “loan repayments” by the
 3 United States Trustee’s office (“UST”) during the continued 341(a) Meeting of Creditors, Avenatti
 4 testified these were “oral agreements” between himself and the firm and were not documented in
 5 writing. [Id., Exh. 15 at 35:2 – 39:19.] The UST noted that Avenatti’s “injection” of money into
 6 EA likely should have been treated as “capital contributions” not as loans and questioned the
 7 propriety of Avenatti, as EA’s managing partner, directing “loan repayments” to himself at a time
 8 when the firm was not meeting its liabilities (including payroll taxes). [Id.] When pressed, Avenatti
 9 testified the money from these “loans” could have come from AA or other corporate entities he
 10 owns and controls and may have been paid back to him personally, but those questions could not
 11 be answered “without the documents.” [Id. at 36:11 – 37:16.] During the first day of his Judgment
 12 Debtor Examination, Avenatti was equally cagey about how EA is being funded and where the
 13 money was coming and going, stating he would need to review “bank records” to make these
 14 determinations. [Id., Exh. 16 at 42:13 – 44:15.]

15 Second, after the bankruptcy case was dismissed, Avenatti began filing certain lawsuits
 16 (such as the Stormy Daniels case) under the firm name AA rather than EA. [Frank Supp., Exh. 21.]
 17 EA continued filing new cases under EA’s name post-dismissal of the bankruptcy. [Id., Exh. 19,
 18 No. 34 (Feldblumb); Exh. 20 (Feldblumb Complaint filed April 5, 2018).] EA is an ongoing
 19 business currently representing clients in over at least 40 publicly-filed cases. [Id., Exh. 19.]
 20 Avenatti is taking the position that as managing partner, he can pick and choose which entity to use
 21 when representing clients. [Id., Exh. 16 at 68:12 – 69:15.] This is wrong in several respects:

22 • *One*, Avenatti is the managing partner of EA with fiduciary duties to EA. Under
 23 California law, “partners cannot compete with their firm during the partnership, even for ‘the most
 24 remunerative cases.’” Heller Ehrman LLP v. Davis Wright Tremaine LLP, 4 Cal.5th 467, 480
 25 (2018) (quoting Jewel v. Boxer, 156 Cal. App. 3d 171, 180-81 (1984)). “As managing partner, [the
 26 defendant] was prohibited from engaging in self-dealing in any way, shape or form. The law does
 27 not permit a fiduciary to deal with himself in any transaction in his individual capacity.” Bardis v.
 28

1 Oates, 119 Cal.App.4th 1, 6 (2004). Thus, Avenatti cannot direct clients to a competing “law firm”
 2 owned by him.

3 • *Two*, there is no separate law firm called “Avenatti & Associates, APC” (i.e. “AA”).
 4 The California State Bar has confirmed that AA has never registered as a law firm or corporate
 5 entity authorized to practice law in this state as it is required to do under the law.⁵ [Frank Supp.,
 6 Exh 17.] AA is simply the personal corporation through which Avenatti owns his interest in EA.

7 • *Three*, in AA’s corporate filings with the California Secretary of State, when asked
 8 to “Describe the Type of Business of the Corporation,” AA responded “Eagan Avenatti, LLP.”
 9 [Frank Supp, Exh. 18.]

10 • *Four*, the address, telephone numbers and emails listed on the caption pages for the
 11 AA lawsuits are the same address, telephone numbers and emails for EA. [Compare Frank Supp.
 12 Exh. 21 with Exh. 20.] Also, the attorneys on the AA matters are EA attorneys. [Id., Exh. 16 at
 13 50:16 – 51:10, 53:7 - 16.] When asked about this during the first day of the Judgment Debtor
 14 Examination, Avenatti claimed that AA reimburses EA for the attorneys’ time and office expense.
 15 [Id., Exh. 16 at 77:8 – 85:13.] However, when asked how much AA has reimbursed EA this year,
 16 Avenatti answered “nothing.” [Id., Exh. 16 at 84:13-16.]

17 After being shown this evidence in connection with JFL’s Motion for a Restraining Order,
 18 the Bankruptcy Court specifically added language in the Restraining Order requiring EA to file
 19 “notice of receipt of any monies in relation to the Cases, regardless of whether the payment is made
 20 to Debtor [EA], Avenatti & Associates, Michael Avenatti, or Michael Eagan, or any entity
 21 controlled by Debtor [EA], Avenatti & Associates, Michael Avenatti, or Michael Eagan.” [Frank
 22 Decl., Exh. M, ¶ 2.] This is why the ORAP Subpoena includes requests for bank statements of AA

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 25 ⁵ California Corporations Code § 13404 provides that “no professional corporation shall render professional services
 26 in this state without a currently effective certificate of registration issued by the government agency regulating the
 27 profession . . . pursuant to the applicable provisions of the Business & Professions Code.” Cal. Bus. & Prof. Code §§
 28 6160 and 6161 require professional corporations, such as Avenatti & Associates, APC, to register with the California
 State Bar. The California State Bar Rules further provide that a law corporation “is not entitled to practice law”
 without a currently effective certificate of registration which must be renewed each year. See Cal. Bar. Rule
 3.154(A), Rule 3.156(B). Simply put, Avenatti & Associates, APC is not and has never been a law firm or separate
 entity authorized to render professional services or practice law.

1 and Avenatti, as well as other financial records, to determine the flow of money between these
 2 related persons and entities.

3 **8. The Need for Bank Statements for the EA Client Trust Account.**

4 One method law firms and attorneys have used to evade creditors is to place funds in a client
 5 trust account. See, e.g. In re Stewart 2008 WL 8462965 at *7 (9th Cir. BAP Jan. 14, 2008); In re
 6 Matter of Oxman, 2012 WL 7828358 (Review Dept. State Bar Ct. of CA. Jan. 13, 2012). During
 7 the first day of the Judgment Debtor Examination, Avenatti testified that all EA bank accounts are
 8 at California Bank & Trust. [Frank Supp., Exh. 16 at 32:14 – 33:14.] As noted above, the U.S.
 9 Marshal had levied these accounts on two occasions and found only \$3,003 in June and \$99 in July.
 10 [Id., Exhs. 13, 14.] This despite the fact EA has been paying approximately \$130,000 per month
 11 in expenses and receiving at least \$35,000 per month in income on a fixed fee case (the “Medline”
 12 case). [Id., Exhs. 21,22.] The obvious question is where is EA getting the money to pay its
 13 expenses? As set forth below, there is evidence that EA is improperly using its client-trust account
 14 (the “IOLTA account”) to pay for those expenses. An IOLTA account is not subject to a bank levy.

15 After the dismissal of the bankruptcy, EA paid Peter Norell, a former private investigator
 16 for EA, a sum of money to resolve claims against the firm. [Frank Supp., ¶ 38.] The payment was
 17 wired to Mr. Norell’s company from EA’s IOLTA account. [Id., ¶¶ 38, 39, Exh. 24.] During the
 18 first day of the Judgment Debtor Examination, Avenatti admitted the settlement payment to Norell
 19 was made for “multiple matters” and was an EA expense. [Id., Exh. 16 at 44:21 – 46:1.] Avenatti
 20 further admitted it was *not* a client expense that could be paid from an IOLTA account. [Id.]
 21 Nevertheless, that appears to be exactly what happened.

22 This is the reason the ORAP Subpoena includes requests for the bank statement records for
 23 EA’s IOLTA account to determine if EA is improperly using the account to fund the firm and/or
 24 evade the Judgment.

25 D. **CONCLUSION**

26 In sum, the ORAP Subpoena should be fully enforced.

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1 Dated: October 1, 2018

Respectfully submitted,

2 WEINTRAUB & SELTH, APC
3 FRANK SIMS & STOLPER LLP

4 By: /s/ Scott H. Sims
5 SCOTT H. SIMS
6 ANDREW D. STOLPER
7 Attorneys for Judgment Creditor
8 JASON FRANK LAW, APC

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DECLARATION OF JASON M. FRANK

I, Jason M. Frank, declare as follows:

1. I am the owner and president of the judgment creditor, Jason Frank Law, PLC (“JFL”). I am admitted to practice law before all federal and state courts in the State of California, and I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth herein, unless stated on information and belief, and if called as a witness, I could and would competently testify thereto.

2. I have been a member in good standing of the State Bar of California since 1997. I received my J.D. degree from the University of Michigan in 1997, and my B.A. degree from the University of Michigan in 1994. I was formerly a litigation partner at Paul Hastings Janofsky & Walker LLP. From February 2009 through May 20, 2016, I was an attorney at Eagan Avenatti, LLP (the “EA”), either as an employee or through a contract between JFL and EA. I am currently a partner and founder of Frank Sims & Stolper LLP.

Brief History of the Dispute, EA's Bankruptcy and the Structured Settlement

3. EA is a law firm based in Newport Beach, California that primarily represents clients in contingency matters. The managing partner of EA is Michael Avenatti (“Avenatti”). Prior to my departure from the firm, EA had two equity partners, Avenatti and Michael Eagan (“Eagan”).

4. JFL is my professional law corporation. From November 1, 2013 through May 20, 2016, I worked at EA pursuant to an independent contractor agreement between JFL and EA (the "JFL Contract"). A true and correct copy of the JFL Contract is attached as **Exhibit 1**.

5. EA failed to pay substantial sums of money owed under the agreement. Accordingly, in February 2016, JFL filed a demand for arbitration for breach of contract and fraud against EA before JAMS. I, thereafter, left EA on May 20, 2016.

6. The arbitration was assigned to a three-judge panel consisting of retired California Appellate Court Justice Steven Stone, and retired California Superior Court Judges Terry Friedman and Judith Ryan (the “Panel”). The plenary Arbitration hearing (the “trial”) was set for March 13, 2017.

1 7. During discovery in the arbitration, EA violated numerous Panel orders to produce
2 its financial records, including EA's tax returns and Schedule K-1s (as required under the JFL
3 Contract). This resulted in substantial evidentiary and issue sanctions against EA. A true and
4 correct copy of the Panel's Final Sanction Order, dated February 10, 2017, is attached as Exhibit
5 2.

6 8. On February 22, 2017, the Panel ordered Avenatti, Eagan, EA's bookkeeper, Judy
7 Regnier, and EA's outside accountant to sit for a deposition by March 3, 2017. A true and correct
8 copy of this order is attached as **Exhibit 3**.

9 9. On March 1, 2017, two days before the deposition deadline and twelve days before
10 trial, a purported creditor of EA named "Gerald Tobin" filed a petition to place EA into involuntary
11 Chapter 11 bankruptcy. [Case 6:17-bk-01329-KSJ, Dkt. 1.] Tobin alleged he was owed \$28,700
12 and filed his petition to place EA into involuntary bankruptcy in the Middle District of Florida,
13 even though EA is a law firm based in Newport Beach, California. [*Id.*] I learned during discovery
14 that the address on Tobin's petition was for a UPS mailbox that was opened with cash on February
15 28, 2017, one day before the filing of the petition.

16 10. On March 2, 2017, EA notified the Panel the depositions and arbitration could not
17 go forward due to the Tobin petition and the resulting automatic bankruptcy stay. EA and Avenatti
18 denied having any involvement in Tobin's petition and claimed that the timing of the petition was
19 just a "coincidence."

20 11. On March 7, 2017, JFL filed an Emergency Motion for Relief from the Automatic
21 Stay with the bankruptcy court in Florida before the Honorable Karen S. Jennemann (the "Florida
22 Bankruptcy Court"). The next day, on March 8, 2017, the Florida Bankruptcy Court conditionally
23 granted the motion, with the caveat that the stay would remain in effect if EA voluntarily consented
24 to bankruptcy. In explaining her ruling, the Florida Bankruptcy court noted that Tobin's
25 "involuntary case has the stench of impropriety" and questioned whether Tobin "has some
26 relationship with the firm that would have induced a collusive filing or if [EA] just got plain lucky
27 that somebody filed on the eve of the arbitration." A true and correct copy of the relevant page
28 from the Transcript of this proceeding are attached as **Exhibit 4**.

1 12. On the eve of the arbitration, on March 10, 2017, EA consented to be placed into
2 Chapter 11 bankruptcy, thereby preventing the arbitration from going forward. [Case 6:17-bk-
3 01329-KSJ, Dkt. 12.]

4 13. EA's bankruptcy case was ultimately transferred to the Honorable Catherine E.
5 Bauer of the United States Bankruptcy Court for the Central District of California (the "Bankruptcy
6 Court").

7 14. During the bankruptcy proceedings, EA entered into a structured settlement with
8 JFL, the IRS and other creditors as a condition to the Bankruptcy Court granting EA's motion to
9 dismiss its bankruptcy case. A true and correct copy of the settlement between JFL and EA and
10 related parties (the "JFL Settlement") – which was one of the agreements that was a part of the
11 structured settlement – is attached as **Exhibit 5**.

12 15. Under the JFL Settlement, EA agreed that JFL would have an allowed claim of \$10
13 Million against EA (among other consideration), and in return JFL would not oppose the dismissal
14 of the bankruptcy case. [See Exhibit 5, § 3.1.] EA further agreed that if EA failed to timely make
15 settlement payments to JFL after the dismissal of the bankruptcy, the Bankruptcy Court would
16 retain post-dismissal jurisdiction to enter a judgment against EA in the amount of \$10 Million. [Id.,
17 § 3.6.] The parties further agreed the Bankruptcy Court would retain jurisdiction to effectuate its
18 orders – as set forth in EA's motion to dismiss. [Case 8:17-11961-CB, Dkt. 343 at 29:9-10.]

19 16. On March 15, 2018, the Bankruptcy Court approved the structured settlement
20 (including the JFL Settlement) and dismissed EA's bankruptcy case, retaining post-dismissal
21 jurisdiction.

22 17. EA subsequently defaulted on the JFL Settlement. Accordingly, in accordance with
23 the settlement terms, JFL filed a motion for entry of judgment with the Bankruptcy Court. [Case
24 8:17-11961-CB, Dkt. 434.] The Court granted the motion and entered the Judgment against EA
25 on May 22, 2018. [Id., Dkt. 444.] EA did not oppose the motion, nor did it oppose the Bankruptcy
26 Court's jurisdiction to enter the Judgment. Further, EA did not appeal the Judgment.

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Current Status of the Proceedings

2 18. On September 24, 2018, after the status conference before this Court, the parties
3 attended a subsequent hearing before the Bankruptcy Court regarding its Notice of Intent to
4 Abstain. Judge Bauer indicated she was pleased this matter would be heard before this Court and
5 reiterated the Bankruptcy Court's intent to abstain from further proceedings. The parties notified
6 Judge Bauer that EA would potentially raise an objection to this Court hearing the MPO. Counsel
7 for JFL informed the Bankruptcy Court it would file a Motion to Withdraw the Reference so that
8 all pending proceedings would be transferred before this Court and resolve any procedural issues.
9 To ensure there was not a gap in the enforcement of its orders, the Bankruptcy Court agreed to
10 continue the hearing on its Notice of Intent to Abstain to October 10, 2018, after the MPO hearing
11 before this Court.

12 19. On September 27, 2018, JFL filed the Motion to Withdraw the Reference with this
13 Court and requested an expedited hearing on or before October 8, 2018. The Court has not yet set
14 a hearing date for the motion.

Update on Meet and Confer Efforts

16 20. On September 24, 2018, after the status conference with this Court, JFL sent an
17 email to Avenatti and EA's counsel in the bankruptcy proceedings, Hamid Rafatjoo. The email
18 attached JFL's previous offer to narrow the documents requested in the ORAP subpoena (made on
19 or about July 30, 2018) and requested a response to the offer. Rafatjoo responded he has not been
20 retained to represent EA in proceedings before this Court and this was "Not-a-Hamid-Issue."
21 Avenatti has not responded to the email, nor has EA indicated it is willing to produce any
22 documents in response to the ORAP subpoena. A true and correct copy of the email chain is
23 attached as **Exhibit 6**.

Additional Documents Referenced in this Supplemental Brief

25 21. Attached as **Exhibit 7** is the Declaration of Michael J. Avenatti in support of
26 Opposition to Jason Frank Law, PLC's Amended Motion for Entry of Assignment and Restraining
27 Order. [Case 8:17-11961-CB, Dkt. 488].

1 22. Attached as **Exhibit 8** is a true and correct copy of the May 15, 2014 Final Approval
2 Order and Judgment in the matter, Scott v. Service Corporation International, Los Angeles Superior
3 Court Case Number BC 421528 awarding \$23.5 Million in fees and costs to EA. EA received this
4 \$23.5 Million in 2014.

5 23. Attached as **Exhibit 9** is a true and correct copy of EA's Statement of Financial
6 Affairs for Non-Individuals Filing for Bankruptcy filed on April 6, 2017 in United States
7 Bankruptcy Court, Middle District of Florida, Orlando Division, Case No. 6:17-bk-01329-KSJ
8 [Dkt. 50].

9 24. Attached as **Exhibit 10** is a true and correct copy of EA's Summary of Assets and
10 Liabilities for Non-Individuals filed on April 6, 2017 in United States Bankruptcy Court, Middle
11 District of Florida, Orlando Division, Case No. 6:17-bk-01329-KSJ. [Dkt. 48].

12 25. Attached as **Exhibit 11** is a true and correct copy of EA's Schedule of Assets filed
13 with the Bankruptcy Court on July 11, 2017 [Dkt. 149.]

14 26. Attached as **Exhibit 12** is a true and correct copy of EA's Summary of Amended
15 Schedules filed on July 13, 2017 in United States Bankruptcy Court, Central District of California,
16 Santa Ana Division, Case No. 8:17-bk-11961-CB. [Dkt. 161].

17 27. Attached as **Exhibit 13** is a true and correct copy of Memorandum of Garnishee
18 dated June 19, 2018.

19 28. Attached as **Exhibit 14** is a true and correct copy of Memorandum of Garnishee
20 dated July 20, 2018.

21 29. Attached as **Exhibit 15** is a true and correct copy of transcript excerpts from the July
22 14, 2017 341(a) Meeting of Creditors.

23 30. Attached as **Exhibit 16** is a true and correct copy of transcript excerpts from the first
24 day of the Judgment Debtor's Exam, July 25, 2018, in this matter.

25 31. Attached as **Exhibit 17** is a true and correct copy of correspondence from The State
26 Bar of California dated June 13, 2018 re Avenatti & Associates APC.

27 32. Attached as **Exhibit 18** is a true and correct copy of Avenatti & Associates'
28 Statement of Information filed with the California Secretary of State on January 4, 2016.

1 33. Attached as **Exhibit 19** is a list of cases in which EA is currently representing clients
2 based on a review of publicly filed records. This is the “Exhibit A” referenced in the Bankruptcy
3 Court’s Restraining Order.

4 34. In its Schedule of Assets (Exhibit A), EA listed 23 cases in which it was currently
5 representing clients. Attached as **Exhibit 20** are the caption pages and dockets for matters in which
6 EA and its lawyers are counsel of record, which were not previously identified in EA’s bankruptcy
7 schedules.

8 35. Attached as **Exhibit 21** is a caption page from the matter entitled Stephanie Clifford
9 a.k.a. Stormy Daniels a.k.a Peggy Peterson v. Donald J. Trump et al., Case No 2:18-cv-02217-SJO-
10 FFM.

11 36. Attached as **Exhibit 22** is the Notice of Receipt of Proceeds filed by EA for July
12 and August 2018 as required by the Bankruptcy Court’s Restraining Order. The notice purportedly
13 lists all income received by EA or AA from the cases listed on Exhibit A (Exhibit 19.)

14 37. Attached as **Exhibit 23** are purportedly the expenses EA paid in the months of
15 August and September 2018 as EA’s counsel agreed to provide in connection with the Restraining
16 Order.

17 **Facts Regarding EA’s Payment to Peter Norell Out of an IOLTA Account**

18 38. On or around March 19, 2018, after the dismissal of EA’s bankruptcy, Avenatti
19 asked me to help him resolve a dispute between EA and Peter Norell, a private investigator who
20 previously worked for EA. Norell claimed EA owed his company (Norell Consulting, Inc.) money
21 for investigative work he performed for the firm on various matters and generally for the firm. The
22 parties were able to resolve the dispute resulting in a payment from EA to Norell. The payment
23 was made by wire from EA’s client trust account (the “IOLTA” account) on March 30, 2018.

24 39. Attached as **Exhibit 24** is a true and correct copy of the redacted bank statement
25 from Norell Consulting Inc. reflecting the payment from EA’s IOLTA account. The description of
26 the account lists the State Bar of California – which is how banks designate IOLTA accounts based
27 on my understanding and experience. Norell Consulting Inc. produced this bank statement in
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1 response to a subpoena from JFL requesting documents reflecting all payments received from EA
2 in 2018.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing this true and correct. Executed this 3rd day of October 2018.

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6 /s/ Jason M. Frank
7 JASON M. FRANK
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